

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff(s),

v.

AUHZARAY DELYNN FOSTER,

Defendant(s).

Case No.2:23-CR-180 JCM (MDC)

ORDER

Presently before the court is defendant Auhzaray Delynn Foster's motion for reconsideration. (ECF No. 46). The government did not respond. For the reasons stated below, the court denies the motion.

Foster moves the court to reconsider its order holding Foster's motion to dismiss in abeyance. (ECF No. 45). Foster was indicted in September 2023 and charged with one count of felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). (ECF No. 1). On May 9, 2024, the Ninth Circuit ruled that 18 U.S.C. § 922(g)(1) is unconstitutional as applied to certain nonviolent offenders. *United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024).

Days after the decision, Foster filed a motion to dismiss the indictment against him as unconstitutional under *Duarte*. (ECF No. 39). The government moved to hold the motion to dismiss in abeyance for 60 days or until *Duarte* is reheard, which the court granted. (ECF No. 44). The Ninth Circuit thereafter agreed to vacate the *Duarte* decision and rehear the case *en banc*. *United States v. Duarte*, 108 F.4th 786 (9th Cir. 2024). The case is scheduled to be heard December 9, 2024.

Foster asserts the court "overlooked" his opposition to the abeyance because it adopted the government's proposed order. The court indeed considered Foster's arguments in opposition but

1 found them unavailing. The Ninth Circuit has since agreed to rehear *Duarte*, which means Foster's  
2 indictment now rests on an open question of law before the Ninth Circuit. Accordingly, the court  
3 finds THAT holding his motion to dismiss in abeyance is appropriate and declines to grant  
4 reconsideration on these grounds.

5 Foster also argues that he should be released on conditions pending trial. The court  
6 disagrees. Foster made his initial appearance in September 2023 before Magistrate Judge  
7 Ferenbach and was ordered detained pending trial. (ECF No. 7). Foster then filed a motion to re-  
8 open the detention hearing and appeared a second time before Magistrate Judge Couvillier. (ECF  
9 No. 36). The court again ordered Foster detained because he was a flight risk and danger to the  
10 community. (*Id.*).

11 There is no reason to deviate from previous independent findings as it is well within the  
12 court's authority to continue detention. 18 U.S.C. § 3124(a). Moreover, the court anticipates that  
13 *Duarte* will be resolved in a reasonably timely manner as it is on the court's calendar for December  
14 2024.

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Auhzaray  
17 Delynn Foster's motion for reconsideration (ECF No. 46) be, and the same hereby is, DENIED.

18 DATED November 14, 2024.

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22 UNITED STATES DISTRICT JUDGE  
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